



CONNECTICUT

**TESTIMONY OF
NATIONAL FEDERATION OF INDEPENDENT BUSINESS (NFIB)
OPPOSING
HB-6875, AAC CRIMINAL RECORDS AND EMPLOYMENT APPLICATIONS
BEFORE THE
LABOR & PUBLIC EMPLOYEES COMMITTEE
MARCH 5, 2015**

A non-profit, non-partisan organization founded in 1943, NFIB is Connecticut's and the nation's leading small-business association. In Connecticut, NFIB represents thousands of members and their employees. NFIB membership is scattered across the state and ranges from sophisticated high technology enterprises to "Main Street" small businesses to single-person "Mom & Pop" shops that operate in traditional ways. NFIB's mission is "To promote and protect the right of its members to own, operate, and grow their businesses." On behalf of those small- and independent- job-providers in Connecticut, I offer the following comments:

NFIB/Connecticut has significant concerns with HB-6875, and urges rejection. While no doubt well intentioned, this legislation would dramatically restrict the ability of small employers to have necessary and relevant information related to the criminal backgrounds of potential employees. NFIB opposes shielding criminal histories, including misdemeanors, because it puts an unfair burden on small business' ability to screen applicants for employment, and it also increases the potential for litigation by adding more risks and variables into the hiring process, potentially putting business, employees and customers at risk, as well as allowing for a new cause of action against employers (new language in (j) lines 129-131), but without considering any legal recourse for employers who may be put in a tenuous legal position as a result of limited information during the hiring process. Small business owners need information upfront and early in the hiring process and this is beneficial to all parties.

Hiring any new employee comes with risks, and it is important for employers to know the integrity of the people they will trust to help administer their business, property, certain financial information, and the safety of their customers and employees. Public records of applicants' criminal activity, including acts considered "nonviolent misdemeanors", can be a critical factor in determining the integrity of an applicant, and his or her suitability for employment.

Most small businesses do not have a human resource department. Therefore access to public records of criminal history reporting is an important resource and tool for employers to retain. Small businesses are often family operations. Even where employees are not related by blood, small business employees are often considered family members to each other. The owners of such businesses require full information about prospective employees to ensure the continuation of the nature of such a business. The existence of



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incomplete criminal offender information can only act to the detriment of the job applicant seeking to re-enter the workforce. And there is no empirical evidence that the claimed benefits of a new law – that the unemployment rate among persons with criminal backgrounds will be reduced – are true.

The business community generally supports efforts to give people second chances. Small businesses in particular tend to have a good track record in this regard. But small business owners are much better positioned than the government to determine who to hire, how to hire, and they make those decisions based on many factors. In order for business owners to make informed hiring decisions, it is critical they retain access to relevant public records that document criminal acts committed by or charges against applicants for employment, including those acts defined as misdemeanors. In a recent survey of NFIB members regarding the issue at stake in this bill, approximately 89% of the small business owners responding opposed prohibiting employers from considering an applicant's criminal history until after the interview process has concluded. Only 6.3% were in support of such a measure, and the remainder undecided.

Prohibiting small employers from even inquiring about the existence of a criminal history during the application process as contemplated in the new language in (i), lines 120-128, serves no purpose. The unintended impacts of this legislation may even be counterproductive to employment applicants because prospective employers, unable to know if such a history exists, until the end of the hiring process, may be constrained to reject an applicant out of hand. Again, access to accurate information is the best policy to advance public safety, fair employment, and business growth and development.

If HB-6875 passes, Connecticut employers will no longer have access to valuable public records of criminal history information for prospective employees, putting their business, employees, and customers in jeopardy, and opening the door for potential liability claims.

Regardless of the reason for conducting a criminal background check, existing laws and regulations already prohibit discriminatory application and usage of selection procedures. Title VII, the federal EEOC and state CHRO all govern and enforce various antidiscrimination laws and procedures when it comes to issues of employment. NFIB believes that federal and state rules, along with the recently revised EEOC Criminal Check guidance, adequately protect individuals from discriminatory selection procedures.

Finally, regarding "nonviolent misdemeanors", NFIB is specifically concerned with offenses like: larceny; criminal trespass; manufacturing or possession of burglar's tools; certain credit card crimes; vendor fraud; computer crimes; forgery; various gambling offenses; destruction, delay or opening of private messenger letters; money laundering; falsely reporting an incident; and various other offenses to and destruction of property, just to



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name a few. For example, an employer would certainly want to know whether a job applicant was convicted of misdemeanor theft prior to hiring them to manage their inventory.

Finally, concerns over workplace security and skyrocketing litigation costs have made pre-employment background checks an essential tool for many businesses – large and small. Moreover, employers are legally required and/or it is best practice to conduct background checks for certain jobs. Depending on the industry, a business might need to conduct a criminal background check and may be prevented by statute from hiring employees convicted of particular offenses. For instance, almost every state requires a background check for anyone who works with children or in a health care facility. Small businesses that are defense contractors or subcontractors are subject to strict federal screening standards. Small businesses that are alarm & security systems companies routinely screen their installers and monitors who have access to people's homes, businesses, and other valuable information.

Thank you for the opportunity to comment, and NFIB suggests rejection of HB-6875.